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ABSTRACT

Presented are findings of a study to monitor programs for the educable mentally retarded (EMR) in California, with emphasis on the numbers of racial and ethnic minority students placed in EMR classes. The document is divided into six sections: an introductory section explaining impetus for the study; Section II with background information on the California Advisory Committee involvement in the investigation, EMR demography, and the increase in educationally handicapped enrollment; Section III on state legislative and judicial decisions regarding EMR programs and inappropriately placed minority (particularly Black) children; Section IV on the California Department of Education's administrative responsibilities in terms of the assessment and evaluation of students for placement in EMR programs; Section V on the California Master Plan for Special Education designed to correct such needs as clearer delineation of responsibility at the state, county, and local levels for the provision of special education; and a final section listing recommendations which include reviews and audits providing regular and systematic statistics on the ethnic composition of educationally handicapped classes in California school districts. Appended are a statement of concern by the Bay Area Association of Black Psychologists and additional comments from the California Department of Education. (SBH)

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Evaluation of Educable Mentally Retarded Programs in California

—A report prepared by the California Advisory
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EC 102374

LETTER OF TRANSMITTAL

CALIFORNIA ADVISORY COMMITTEE TO THE U.S. COMMISSION ON CIVIL RIGHTS

May 1977

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Sirs and Madam:

The California Advisory Committee submits this report of its study of the monitoring of programs for the educable mentally retarded (EMR) by the California State Department of Education as part of its responsibility to advise the Commission on civil rights issues within this State.

In its report, *Toward Quality Education for Mexican Americans*, the Commission found that one of the most common discriminatory practices by schools in providing educational services has been to place disproportionate numbers of racial and ethnic minority students in classes for the educable mentally retarded.

The Advisory Committee over the past years has received allegations that minority students are placed in EMR classes in numbers disproportionate to their representation in the general student population. The Advisory Committee decided to gather data on these EMR programs in the State.

As part of its study on the effectiveness of the State department of education in ensuring statewide compliance with State and Federal laws and regulations affecting language-minority children, the Advisory Committee reviewed concerns in EMR programs.

The Advisory Committee held an open meeting June 26 and 27, 1975, in Sacramento to collect public testimony on State and Federal monitoring of programs for language-minority children and educable mentally retarded students. The first report of this study, *State Administration of Bilingual Education—Si O No?*, was released June 1976. This second report was also the result of that activity.

It is the Advisory Committee's contention that without effective monitoring by State government, EMR placement will continue to misplace and mislabel minority children.

Although the State has attempted some constructive change, problems remain. The California Master Plan for Special Education was intended to alleviate the inequities in special education. However, the Advisory Committee discovered that the master plan provides no State department enforcement mechanisms against noncomplying school districts.

The Advisory Committee's basic finding is that the California State Department of Education must do more to enforce existing regulations and guidelines for EMR programs.

The Advisory Committee is making recommendations to the State legislature and the State department of education to improve this educational situation. We urge the Commission to support our recommendations.

Respectfully,

Herman Sillas, Jr.

Chairperson

California Advisory Committee

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ACKNOWLEDGMENTS

The Advisory Committee wishes to thank the staff of the Commission's Western Regional Office, Los Angeles, Calif., for its help in the preparation of this report. This report was written by Roberta Jones-Booker. Editing assistance was provided by Thomas V. Pilla and Sally E. James with support from Grace Diaz. All worked under the guidance of Philip Montez, Regional Director.

Legal review assistance was provided by the Office of General Counsel.

Final production was the responsibility of Deborah A. Harrison and Vivian Washington, supervised by Bobby Wortman, in the Commission's Publications Support Center, Office of Management.

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I. Introduction

Title VI of the Civil Rights Act of 1974 provides:

No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.¹

By using the leverage of its financial assistance programs and through implementation of Title VI requirements, the Federal Government has achieved results in the elimination of discriminatory educational practices.² The major result has been in eliminating racial segregation in the public schools. For example, during the period 1964 through 1969, the number of children placed in desegregated schools increased tenfold.

The United States Department of Health, Education, and Welfare's Office for Civil Rights (HEW/OCR) monitors federally-funded public school districts and nonpublic schools benefiting from Federal programs to ensure compliance with civil rights provisions.³ Since 1970 HEW has broadened the scope of its Title VI enforcement from solely segregation concerns to include denials of equal educational services.

The United States Commission on Civil Rights has found that one of the most common discriminatory practices of schools in providing educational services has been to place disproportionate numbers of racial and ethnic minority students in classes for educable mentally retarded (EMR).⁴ This discriminatory practice has resulted in a denial of equal educational services to racial and ethnic minority pupils.⁵

Allegations have been made to the Commission's California Advisory Committee that the California State Department of Education has done little to monitor and evaluate EMR placement. Mrs. Virna Canson, west coast regional director, National Association for the Advancement of Colored People, told the Advisory Committee:

In the area of educable mentally retarded, it appears that the State department of education has engaged in unbelievably imbalanced actions***. We seriously question whether the voices of black***psychologists are being heard⁶ [regarding placement of black children in EMR classes]. (See appendix A.)

Mrs. Canson doubted the existence of a broad base of knowledge about EMR problems among parents and students that would produce community pressure for reform. Since minority students are still placed in EMR classes disproportionately to their representation in the general student population, the Advisory Committee decided to study exactly what the State's responsibilities were for monitoring EMR programs and how effectively it fulfilled these responsibilities.

Notes to Section I

1. 42 U.S.C. §2000d-1 (1970).

2. U.S., Commission on Civil Rights, *Toward Quality Education for Mexican Americans* (1974), p. 49.

3. U.S., Commission on Civil Rights, *The Federal Civil Rights Enforcement Effort—1974*, volume III, *To Ensure Equal Educational Opportunity* (1975), p. 2. HEW/OCR and the words United States Department of Health, Education, and Welfare/Office for Civil Rights will be used interchangeably throughout this report.

4. U.S., Commission on Civil Rights, *Toward Quality Education for Mexican Americans* (1974), pp. 72-73. EMR and the words "educable mentally retarded" will be used interchangeably throughout this report. Cal. Educ. Code §6901 (West 1975) defines mentally retarded pupils as: "all pupils under the age of twenty-one years who because of retarded intellectual development as determined by individual psychological examination are incapable of being educated efficiently and profitably through ordinary classroom instruction."

5. *Ibid.*

6. California Advisory Committee open meeting transcript, June 26 and 27, 1975. All quotations, unless otherwise noted, are from this transcript.

II. Background

California Advisory Committee Involvement

In 1970 the Western Regional Office of the United States Commission on Civil Rights conducted an extensive investigation of the San Diego Unified School District, San Diego, California, on the issue of placement of minority students in classes for the educable mentally retarded (EMR). This investigation found that Mexican American¹ and black students were overrepresented in EMR classes in proportion to their numbers in the total school population. Commission staff theorized that testing procedures and other placement practices accounted for the disproportionate numbers of racial minorities in EMR classes. A sample of 20 EMR students (10 black and 10 Mexican American) was retested by a psychologist not employed by the school district. He found that only 1 of the 20 students was mentally retarded, as defined by State regulations.² The Commission's findings eventually resulted in a class action lawsuit against the school district, in which the court found that testing procedures contributed to the disproportionate numbers of minority students in EMR classes.³

On May 25, 1970, a memorandum clarifying HEW policy on equal educational opportunity was issued to all school districts with 5 percent or more national origin minority enrollment. This memorandum—entitled "Identification of Discrimination and Denial of Services on the Basis of National Origin"⁴—set out certain requirements for compliance with Title VI of the Civil Rights Act of 1964. The memorandum included issues dealing with the design and operation of schools and focused in part on student placement. Subsection 2 of HEW's May 25, 1970, memorandum states:

School districts must not assign national origin-minority group students to classes for the mentally retarded on the basis of criteria which essentially measure or evaluate English language skills; nor may school districts deny

national origin-minority group children access to college preparatory courses on a basis directly related to the failure of the school system to inculcate English language skills.

In 1974 the Commission's sixth report of a national study on Mexican American education reviewed the HEW memorandum.⁵ That report, *Toward Quality Education for Mexican Americans*, made a number of recommendations to improve student assignment procedures for the EMR. One recommendation called for State departments of education to establish monitoring mechanisms to determine whether school districts comply with the May 25 memorandum requirements. It is the Advisory Committee's contention that without effective monitoring⁶ by State government EMR placement will misplace and mislabel minority children.

As followup to both the Western Regional Office's study in 1970 and the Commission's statutory report, Commission staff began investigation of State monitoring and evaluation of EMR programs in April 1975. This study was done in conjunction with a review of State responsibilities for bilingual-bicultural programs. Staff collected data and interviewed more than 60 people concerned about or responsible for EMR programs, including parents, students, community leaders, legislators, Federal and State administrators, State department of education staff, State board of education members, staff in the Governor's office, education experts, representatives from the media, and other individuals throughout the State.

On June 26 and 27, 1975, the California Advisory Committee held an open meeting in Sacramento, California.⁷ The purpose was to collect public testimony on the extent to which the State government was monitoring and evaluating EMR and bilingual-bicultural programs. The findings from both the field investigation and the 2-day open meeting are included in two Advisory Committee reports. *State Administration of Bilingual Education—Si o No?* (June 1976) was the first report, and this is the second.⁸ This report focuses

on the State's responsibilities and efforts to monitor compliance with State and Federal laws and regulations related to EMR pupils.

EMR Demography

Educable mentally retarded children are defined by the California education code as: "All pupils under the age of 21 years who because of retarded intellectual development as determined by individual psychological examination are incapable of being educated efficiently and profitably through ordinary classroom instruction."⁹

Since the 1968-69 school year EMR enrollment in the State has decreased by almost half. (See table I.) For the period 1968-74 minority enrollment in EMR classes showed a corresponding decrease in numbers. A relatively small decrease in percentages was noted among minority students. Chart I shows the enrollment in EMR classes by minority group for the years 1969, 1970, and 1973.

Table I

California State Department of Education EMR Enrollment Figures for 1968-74

School Year	Enrollment
1968-69	57,148
1969-70	54,078
1970-71	47,864
1971-72	38,208
1972-73	33,091
1973-74	29,609

Source: "Ethnic Survey of Pupils Assigned to Special Education Classes for the Mentally Retarded." Report to the State board of education from Wilson Riles, July 11, 1975.

Representatives of the California Department of Education told Commission staff that the large decrease in 1969-70 was the result of required retesting of all educable mentally retarded pupils and the removal of those pupils found to be ineligible under new and redefined placement procedures.¹⁰ Transition programs returned some of the EMR to regular classrooms or other special education programs.¹¹

Increase in Educationally Handicapped Enrollment

Although total numbers of EMR have fallen, there has been a proportionate increase in the number of students enrolled in classes for educa-

tionally handicapped (EH)¹² during this same period. (See chart II.) The Advisory Committee was concerned about the implications of this increase.

Mr. Leslie Brinegar, manager of the Special Education Support Unit,¹³ told the Advisory Committee that the department has maintained minority distribution records of educationally handicapped enrollments since 1970-71. The Western Regional Office staff asked the department for these records to study the department's efforts to monitor enrollment patterns in EMR and EH classes. The department provided a chart that included EH enrollment for 1973. The data were not a separate item, but were given as part of larger special education categories. Since the data were not a separate item, EH enrollments could not be identified or computed. The information did not show specific numbers of minority children in EH classes in 1973. The department of education had compiled minority breakdown statistics for 1973 only.

The California State Department of Education is aware of the continuing high proportion of minorities in EMR classes. On March 25, 1974, and July 11, 1975, California Superintendent of Public Instruction Wilson Riles reported to the California State Board of Education that, while there had been a noticeable reduction in the total number of pupils enrolled in EMR classes, little progress had been made in reducing the disproportionate enrollment of minority pupils.¹⁴

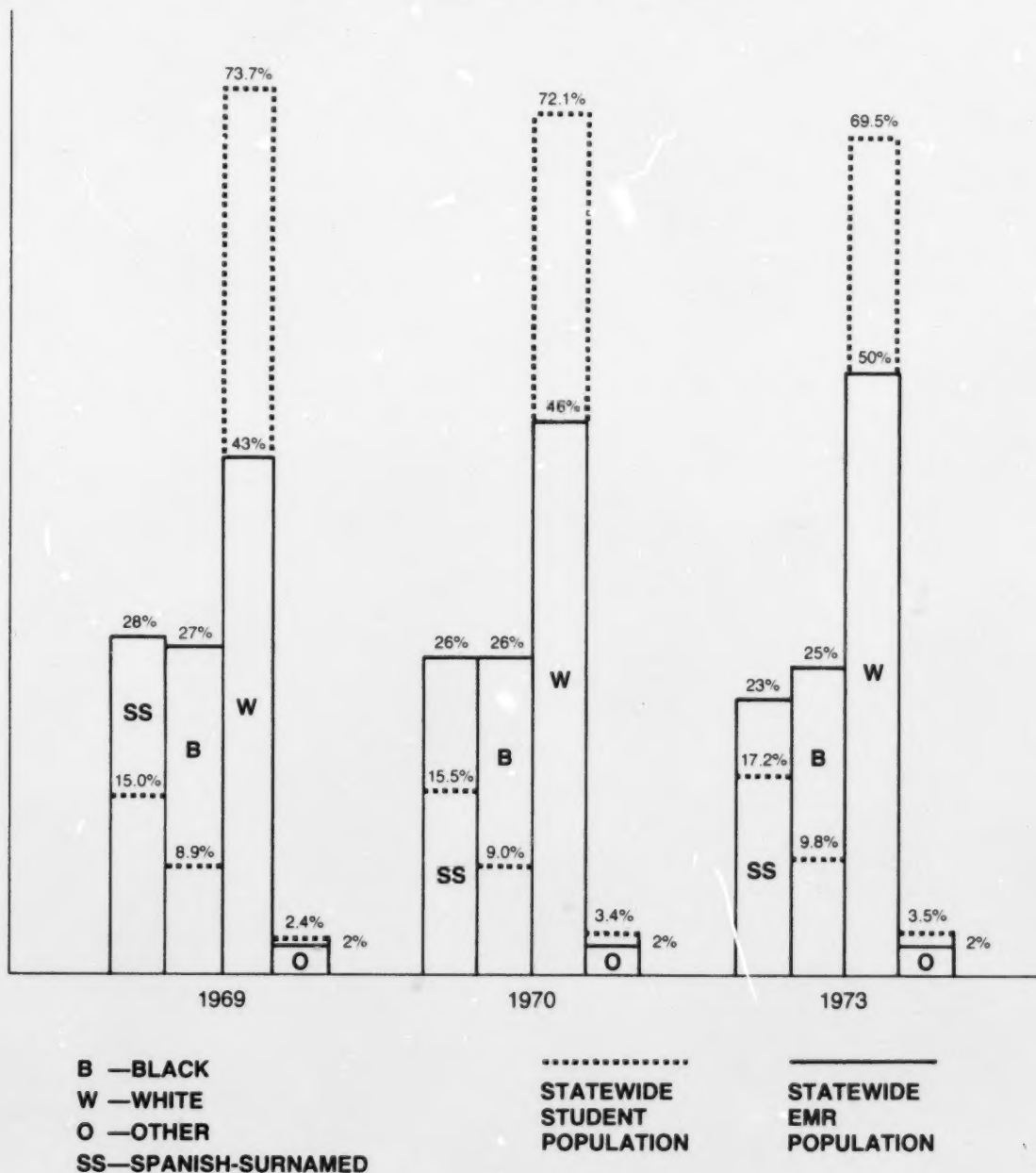
These reports stated that enrollments in programs for the EMR dropped from 57,148 in the 1968-69 school year to 29,609 during the 1973-74 school year. The percentage of Spanish-surname students went from 28.2 percent to 22.7 percent; Spanish-surname students were 16 percent of the statewide school population. The enrollment of black pupils decreased from 27.6 percent to 24.5 percent, yet blacks were only 9.3 percent of the State school population.

The March 25, 1974, report concluded:

Despite 5 years of effort to correct overrepresentation of minority groups in programs for the mentally retarded, the results are disappointing. Improved testing procedures, greater emphasis on non-test data, and test score limitations have resulted in a large reduction in the number of pupils being provided special education, but the reduction has

Chart I

Educable Mentally Retarded Enrollment By Ethnic Group: 1969, 1970, 1973.

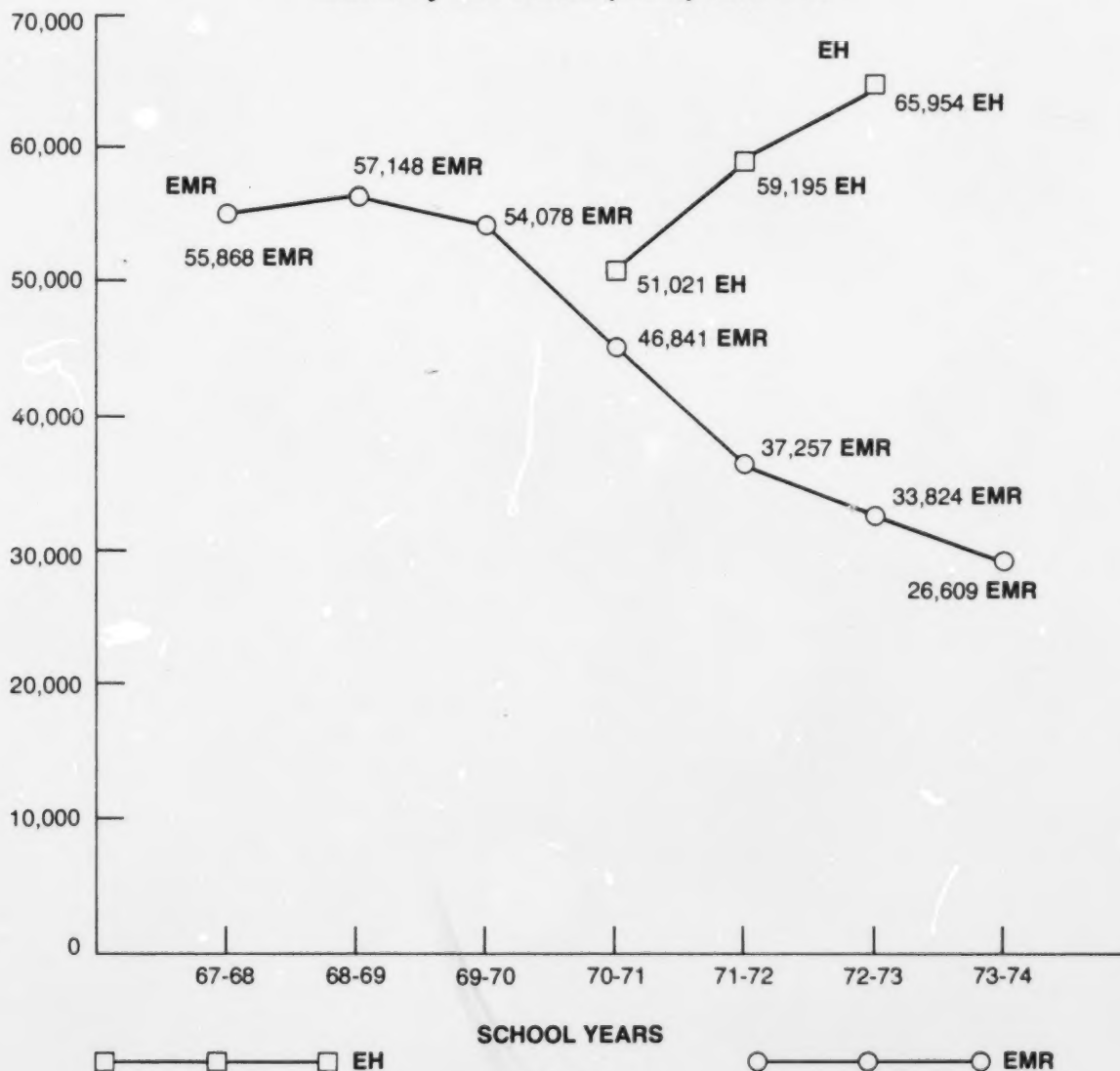


Sources: "Ethnic Survey of EMR Classes," report to the State board of education from Wilson Riles, Mar. 25, 1974.

"Ethnic Survey of Pupils Assigned to Special Education Classes for the Mentally Retarded," report to the State board of education from Wilson Riles, July 11, 1975.

Chart II

A Comparison of Educable Mentally Retarded (EMR), Educationally Handicapped (EH) and Trainable Mentally Retarded (TMR) 1967-74.



Sources: The data utilized to compile this chart were generated from a number of California State Department of Education reports. These included:
 "Placement of Pupils in Classes for the Mentally Retarded." A Report to the California Legislature as Required by House Resolution 262 (1971).

"Special Education Special Class Enrollment Trends 1970 Through 1972 by Grade Level and Sex." Mimeograph. Division of Special Education, Jan. 15, 1973.)

"Ethnic Survey of EMR Classes, 1972-1973." Mimeograph. Division of Special Education, July 31, 1973.

"Analysis of 1972-73 Ethnic Survey Data for Programs for Educable Mentally Retarded Pupils." Mimeograph. Bureau for Mentally Exceptional Children, Sept. 5, 1973.

"Special Education Programs, California Public Schools: Three-Year Comparison." Mimeograph. Special Education Information Unit, Dec. 4, 1973.

"Enrollment of Educable Mentally Retarded Pupils, School Years 1966-69 to 1973-74." Mimeograph. Special Education Support Unit, Bureau for Mentally Exceptional Children.

"Enrollment and Number of Special Training Classes for Trainable Mentally Retarded Minors in the Public Schools of California, Fall Semester, School Years 1962-63 to 1973-74." Mimeograph. Special Education Support Unit, Bureau for Mentally Exceptional Children.

been nearly proportionate among all ethnic groups. It appears that the past approaches are inadequate solutions to the problem.¹⁵

Notes to Section II

1. The findings used the term Mexican American, but the Commission prefers the term Spanish-speaking background to identify persons of Spanish heritage or descent.

2. Cal. Educ. Code §6901 (West 1975).

3. For a full discussion of the case see: *Covarrubias v. San Diego Unified School District*, Civ. No. 70-394S (S.D.Cal., Aug. 21, 1972).

4. U.S., Department of Health, Education, and Welfare, memorandum of May 25, 1970; 35 Fed. Reg. 11595 (1970).

5. U.S., Commission on Civil Rights, *Toward Quality Education for Mexican Americans* (1974), pp. 49-65.

6. The Advisory Committee utilized the following definition of monitoring: "To watch, observe or check especially for a special purpose"; and, "to keep track of, regulate or control." Philip Babcock Gove, chief editor, *Webster's Third New International Dictionary Unabridged* (Springfield, Mass.: G. & C. Merriam Co.), p. 1460.

7. The transcript is a public document and is on file in the Commission's Western Regional Office. California Advisory Committee open meeting transcript, June 26-27, 1975. All quotes, unless otherwise noted, are from this transcript.

8. The State department of education was provided an opportunity to review and comment upon the May 21, 1976, draft of this report. Their comments, received July 15, 1976, were incorporated into this final report where appropriate. State of California, Department of Education, "Comments on the California Advisory Committee Report" (May 21, 1976, draft). (Hereafter cited as *Comments*.)

9. Cal. Educ. Code §6901 (West 1975).

10. Cal. Educ. Code §6902.07 (West 1975).

11. See especially Barbara Keogh et al., *A Review of Transition Programs in California Public Schools* (University of California, Los Angeles, Graduate School of Education, Technical Report SERP 1974-A2, November 1974), p. 8 (hereafter cited as *Review of Transition Programs*).

12. EH and the words "educationally handicapped" will be used interchangeably throughout this report. "Educationally handicapped pupils are pupils under the age of 21 years who, by reason of marked learning or behavior disorders, or both, cannot benefit from the regular educational program, and who, as a result thereof, require special education programs authorized by this chapter. Such learning or behavior disorders shall be associated with a neurological handicap or emotional disturbance and shall not be attributable to mental retardation." Cal. Educ. Code §6750 (West 1975).

13. The office of special education was designated as the special education support unit at the time of the investigation and is referred to as such throughout this report. Leslie Brinegar, assistant superintendent and director, Office of Special Education, California State Department of Education.

14. State of California, Department of Education, *Ethnic Survey of EMR Classes*, Mar. 25, 1974, and July 11, 1975. These annual reports are required by Cal. Educ. Code §6902.10 (West 1975).

15. *Ibid.*

III. State Legislative and Judicial Decisions

Legislative Action

Between 1948 and 1951 programs for EMR students became mandatory by California law.¹ The laws specify requirements such as maximum class size (18 students or 15 if the chronological age spreads over 4 years in one class); minimum daily classroom instruction (grades 1-3, 230 minutes; grades 4-8, 240 minutes; high school, 240 minutes); class locations (centrally located places); and transportation (transportation must be provided). The laws also detail the identification, assignment, and student evaluation procedures to be used at the local school level.² Finally, the laws stipulate administrative responsibility and overall program evaluation responsibility.³ As mandated, county superintendents of schools have specific and primary responsibility for the education of EMR students in districts with less than 901 average daily attendance (ADA);⁴ the California Department of Education's responsibility is more general. According to the education code, the department "shall establish minimum standards for all such special schools and classes and shall enforce these standards throughout the State."⁵

During the past decade many changes occurred in special education practices in the United States. These changes resulted from social, political, and legal pressures. In 1970 the California State Legislature considered new legislation in two major areas affecting the EMR: (1) identification, selection, and placement practices; and (2) supplementary education (i.e., transition) programs for former EMR pupils returning to regular classrooms.⁶

In the first area of legislative concern, Senate Bill 33⁷ was approved during the 1971 regular session of the California Legislature. It provided specific guidelines for identification and placement of minors in special education programs for the mentally retarded and alternative testing methods for non-English-speaking students. Senate Bill 33 also stated that, beginning with the 1971-72 school year, annual reports by each school district

on EMR placement should be made to the State department of education. These reports had to include the ethnic breakdown of children presently and newly placed in EMR classes. If a district showed minorities were represented in EMR classes 15 percent more than their representation in the district as a whole, the reports also had to include an explanation for such disproportionate representation.⁸

Legislative reform was also directed at the negative effects of labeling children.⁹ The importance of adaptive skills and the inequities of traditional practices in IQ testing for children of minority backgrounds were also recognized in this legislative reform.¹⁰

Revised criteria for the placement of minority children into EMR classes led to additional legislative changes in California in 1970-71.¹¹ One of the changes, which is reflected in section 6902.08 of the education code, stipulated that all minors then enrolled in special education programs for the mentally retarded should be retested before the end of the 1970 calendar year to determine the appropriateness of their placement in such programs.

In 1970 the legislature enacted laws designed to return inappropriately-placed educable mentally retarded, particularly minority pupils, to regular instruction.¹² This legislation is commonly known as the transition programs. Later it was replaced by the synonymous phrase "supplemental education programs."¹³ "Under these changes over 22,000 California pupils were reclassified from EMR status and returned to regular educational programs."¹⁴ Of these 22,000, 8,362 were Spanish surnamed, 7,149 were black, and 4 were Native American. Asian EMR enrollment increased from 326 in 1969 to 350 in 1974; there were 323 Pilipino and other minority EMR students in 1969, but no data are available on Pilipino and other minority EMR enrollment in 1974.¹⁵

Under transition legislation in California,¹⁶ school districts could receive supplemental funds

for transition programs, but they were given wide discretion in specific implementation. While the department provided six models for transition programs, many districts developed varied and diverse programs.¹⁷ Although all school districts were obligated to respond to the selection and placement requirements of the legislation, transition programs were optional and not all school districts chose to utilize the available funding.

Also in 1972 the legislature asked the department of education to evaluate the transitional programs.¹⁸ A study of the legislation's effectiveness found potential weaknesses in its implementation:

Such diversity [among transition programs] may speak well for individual responsibility and ingenuity at the district level, but, of course, makes systematic program review and monitoring difficult.

Guidelines from the State department tended to be general and to deal with intent of the legislation rather than to provide directions for program specifics.¹⁹

In 1975 the California Legislature enacted a bill providing educational services for individuals with exceptional needs.²⁰ The State department of education calls this the "Master Plan for Special Education." This law gave the department further responsibility for special education and is discussed in section V.

Judicial Action

Several court cases in California²¹ have focused on the problems of identification and placement of minority children in EMR classes. The *Diana v. State Board of Education* and the *Covarrubias v. San Diego Unified School District* cases have had national impact on placement of students in special education classes.

While most cases dealt with problems in individual school districts, one California case²² also included State responsibility. This was *Larry P. v. Wilson Riles*. The *Larry P.* case was filed in the United States District Court in San Francisco by the San Francisco Neighborhood Legal Assistance Foundation, National Association for the Advancement of Colored People Legal Defense Fund, and California Rural Legal Assistance. Plaintiffs were six black children who were placed into EMR classes. It was alleged that tracking (placement of students by ability level) cast a stigma upon these

children. In a preliminary injunction issued in 1974 the court stated: "Black children wrongfully placed in EMR classes are irreparably harmed by being labeled mentally retarded and placed and retained in EMR classes."²³

It was also alleged that these students were wrongfully placed in EMR classes through the use of culturally-biased, individual intelligence quotient (IQ) tests administered by school psychologists. The court found:

The defendants' continued administration and sanctioning of IQ tests which do not properly account for the cultural background and experiences of Black children, with the knowledge of the racial imbalance in EMR classes which has resulted from reliance in part on such tests, denies to plaintiffs and the class they represent equal protection of the laws guaranteed by the Fourteenth Amendment to the United States Constitution and the Constitution of the State of California. The defendants' pattern and course of conduct constitutes a discriminatory practice.²⁴

On December 13, 1974, Judge Peckham, presiding in the *Larry P.* case, issued a preliminary injunction ordering the San Francisco Unified School District not to place black children in EMR classes on the basis of IQ test scores. He also ordered the State board of education to discontinue the use of IQ tests for placement of black children in EMR classes, which had previously been approved by the board. The State board of education, in compliance with the court order, informed local districts that IQ tests should not be used for EMR placement for black children while the State was under the court's injunction. In a resolution adopted in January 1975, the California State Board of Education broadened the scope to include all children. Civil Rights Commission staff contacted the San Francisco Neighborhood Legal Assistance Foundation in August 1976 to ascertain the status of the *Larry P.* case. A pretrial conference was held November 5, 1976, in San Francisco. According to counsel, the case is proceeding slowly in a discovery posture and should go to trial before fall 1977.

Notes to Section III

1. Cal. Educ. Code §§895, 6902 and 6904 (West 1975).
2. Cal. Educ. Code §§895, 895.3, 895.5 (West 1975).
3. Cal. Educ. Code §§895.2, 895.4 895.6-895.10 (West 1975).

4. Cal. Educ. Code §§895-895.12 (West 1975).
5. Cal. Educ. Code §6906 (West 1975).
6. *Review of Transition Programs*, p. 5.
7. Senate Bill 33 added Cal. Educ. Code §6902.095 (West 1975).
8. *Review of Transition Programs*, p. 8.
9. *Ibid.*, p. 11.
10. *Ibid.* Adaptive skills or behavior is defined as the pupil's ability to perform successfully in the social roles considered appropriate for his or her age and sex.
11. Cal. Educ. Code §§6902.07, 6902.08, 6902.09, 6902.10 and 6902.095 (West 1975). Section 6902.08 is important to the discussion here.
12. Law of September 20, 1970, ch. 1543, p. 3126, §5 [1970] (repealed 1972). Section 18102.11, providing for grants to facilitate return of reevaluated minors to regular school enrollment, was repealed by force of its own terms. The same section was reenacted under emergency legislation on December 11, 1972, and repealed on July 1, 1974. The transition period was originally for 2 years, 1970-72. In 1972 an emergency act was passed to extend funding for transition programs an additional 2 years until July 1, 1974.
13. *Review of Transition Programs*, p. 6.
14. Hanson (1974) as cited in *Review of Transition Programs*, p. 8. The figures are for the period 1970 through 1974.
15. State of California, Department of Education, *Ethnic Survey of Pupils Assigned to Special Education Classes for the Mentally Retarded* (1974), p. 2.
16. See note 12, this section, for a discussion of the legislative history of Educ. Code §18102.11. Law of September 20, 1970, ch. 1543, p. 3127, §6 [1970] (repealed 1972). Section 18102.12, providing for in lieu allowance reports and audit, was repealed by force of its own terms. The same section was reenacted under emergency legislation on December 11, 1972 and repealed on July 1, 1974.
17. *Review of Transition Programs*, p. 9.
18. See notes 12 and 16, this section. In 1972 Cal. Educ. Code §18102.11 was repealed by force of its own terms.
19. *Review of Transition Programs*, pp. 9 and 11.
20. Cal. Educ. Code §7000 *et seq.* (West 1975).
21. *Diana v. State Board of Education*, Civ. No. 70-37 RFT (N.D.Cal., June 18, 1973). *Covarrubias v. San Diego Unified School District*, Civ. No. 70-394S (S.D.Cal., Aug. 21, 1972). *Larry P. et al. v. Wilson Riles, et al.*, Civ. No. 71-2270 RFP (N.D. Cal., filed Nov. 23, 1971).
22. *Larry P. et al. v. Wilson Riles et al.*, Civ. No. 71-2270 RFP (N.D.Cal., filed Nov. 23, 1971).
23. *Ibid.*, p. 3 of findings of fact and conclusions of law.
24. *Ibid.*, p. 4.

IV. California Department of Education's Administrative Responsibilities

A major concern of the department has been the assessment and the evaluation of pupils for placement in EMR programs***. Efforts have been made to reduce disproportionate placement of pupils which existed in programs for the mentally retarded***. I don't know that we have a specific policy*** other than the attempt to follow the provisions that relate to [minority] children in the total group of*** possible EMR children.¹

Leslie Brinegar
Manager
Special Education Support Unit

Within the State department of education the special education support unit was the sole office with program responsibility for EMR. As the unit's name implied, support functions to local school districts had been its primary activity; the unit did periodic program reviews and provided inservice training for special education teachers on request from local citizens or local school districts.²

As of July 1, 1975, the unit had a total of 45 full-time professionals, 3 or 6.6 percent of whom were minorities—1 (2.2 percent) black, 1 (2.2 percent) Asian American, and 1 (2.2 percent) Spanish surnamed. Of the professional staff, 32 were males and 13 were females. The technical and clerical staff totaled 40, 11 or 27.5 percent of whom were minorities—1 (2.5 percent) black, 5 (12.5 percent) Asian American, 3 (7.5 percent) Spanish surnamed, and 2 (5 percent) Native American and Pilipino. Of the technical and clerical staff, 3 were males and 37 were females.³

The implications of monolithic staffing in a bureaucracy that serves the total population have been studied by the U.S. Commission on Civil Rights. In its report, *The Federal Civil Rights Enforcement Effort—1974*, volume V, the Commission concluded that:

Underutilization of a segment of a population in a bureaucracy inevitably affects the quality of services furnished. A bureaucracy which utilizes the services of all groups ensures that all values and interests are articulated and

hence brought to bear upon the decisions made and the policies formulated by it. It will be better able to discharge its functions and serve the public because of the wider range of talents, social experiences, and contacts to its employees. Monolithic bureaucracies are apt to suffer from a lack of diversity of opinion, equalitarianism, and impetus for change. Of similar importance is that such a bureaucracy has the effect of discouraging those whose groups are excluded from it from believing in the fairness of the actions of this important nonelected arm of the American system of government.⁴

Although ethnic minorities were disproportionately included in EMR classes, they were minimally represented in the administration of the special education support unit.

In 1974, the State department of education, special education support unit, published general guidelines for local school districts to use in evaluating their respective EMR programs.⁵ The guidelines included: legal provisions for establishing programs; administrative responsibility; characteristics and learning styles of the EMR; instructional models, goals, and objectives; and evaluation of programs for the EMR. While school district adherence to these guidelines was not mandatory, the unit's manager, Leslie Brinegar, told the Advisory Committee that in his opinion local districts did comply with the department's EMR evaluation guidelines. He conceded, however, that since his office was "not fully staffed and equipped" to conduct systematic reviews of local district evaluations, monitoring was sporadic.⁶

Mr. Brinegar stated that EMR program reviews were done on request from a particular school district or in response to complaints from community persons. These requests were processed irregularly, he said. Sometimes complaints about EMR programs were handled over the telephone and sometimes members of the support unit would visit the district. Mr. Brinegar also said:

If it appears to be a very serious problem we can't resolve, we'll send a person into that

school district to review the situation. And if we find that there are very clearcut kinds of deviations, then we will point that out and ask for correction to take place.

Now, I might add, in my opinion, there are some things that are very clearcut, and some things that are very controversial, very questionable in terms of deviations. There may be differences of opinion as to interpretation of what the law really says.

Mr. Brinegar admitted that the district might not take corrective action immediately. If the district delayed, the department advised that action should take place within a reasonable time. When asked to define a reasonable time, Mr. Brinegar answered that it would depend on the situation, but he thought no more than a year.

As part of the evaluating and monitoring process, school districts in California were required to submit to the State department of education an ethnic survey report of EMR students.⁷ When there was variance of more than 15 percent between educable mentally retarded enrollment and district enrollment of a minority, a district submitted an explanation for the variance.⁸ Mr. Clif Shryock, a consultant in special education for the department, told the Advisory Committee:

I suppose the first thing we'd do is to read and analyze their explanation on why they had larger than the 15 percent. If it seems to***have some reason***that would be the end of it***. We're not required by law to do anything.

The Advisory Committee questioned Mr. Shryock about this:

Q. [By the Chair] Do you simply read and analyze; is that what you said?

A. I said we would read and analyze the information that they sent us, yes.

Q. And then what happens?

A. As I said, if it's made sense and there would be reasons, I suppose, many times, that there might be more than the 15 percent variance then what—I'm not sure what anyone would expect us to do.

Q. You read and analyze and file away the report?

A. That might happen, yes.

Q. Does it happen?

A. Yes. I said it might very well happen, yes.

Q. And that is your standard procedure?

A. That's what the law requires.

The Advisory Committee questions the usefulness of requiring and analyzing reports that lack some followup procedures.

Leslie Brinegar told the Advisory Committee that, if a school district refused to comply with department directives, one alternative was to withhold funds. However, the education code does not specifically grant authority to the department to withhold funds; it states that only the department shall enforce established standards.⁹ The department interprets this code as granting authority to withhold funds from a school district that is found in noncompliance.¹⁰

Despite this interpretation, Mr. Brinegar told the Advisory Committee that withholding funds was not favored by the department because it was viewed as a penalty to pupils who need these special education services.

Margaret Fraser, staff attorney for the California Association for the Retarded, suggested alternatives to ensure compliance. She said that a different mechanism to fund school programs might help. She added:

It seems to me that rather than saying you are out of compliance, we will cut off your funds,***perhaps more supervision, a little more pushing and some kind of decision about how scarce resources will be allocated would have to be made, both at the State level and the State working with the local school district.

Ms. Fraser also suggested that rather than withholding funds from a school district found in noncompliance, the State department of education should consider imposing a sizable fine on districts that refuse to ensure that the special education needs of children within the district are being met.¹¹

The California State Department of Education is mandated to ensure compliance throughout the State with its directives on EMR programs. The testimony of department representatives reflected a passive posture toward assuming this responsibility by allowing school districts to conduct their own EMR programs. State department representatives told Commission staff that enforcement was

a political issue, involving unresolved questions about local school district autonomy.¹²

Transitional and Educationally Handicapped Program Monitoring and Evaluation

Education Code Section 18102.11, which was reenacted in 1972, stipulated that the State board of education was responsible for the evaluation of transition programs. The State board responded by contracting with the University of California at Los Angeles (UCLA), graduate department of education, for this service.¹³ The State department of education did not do its own monitoring.

Marc L. Levitt, lecturer and educational research project consultant, California State University, Los Angeles, told Commission staff in an August 10, 1976, interview: "To the best of my knowledge, no evaluations of transition programs were directly conducted by the State department of education."

During the time that UCLA conducted an evaluation of transition programs, the study team noted a phenomenon related to EMR. While EMR enrollment dropped, enrollment in educationally handicapped (EH) programs rose. The Advisory Committee was concerned about the implications of this trend.

Margaret Fraser told the Advisory Committee: "We are also seeing an increase in the number of children in so-called EH classes; those are classes for the educationally handicapped. Children are also being transferred from EMR classes to EH classes."

Thomas Rothey, administrative analyst for the California State Legislature's budget committee, has worked for 2-1/2 years with financial and program aspects of the educable mentally retarded. He told the Advisory Committee that EMR enrollments have decreased rapidly and added that the report submitted to the department of education by UCLA on the State's transition programs confirmed his suspicions that no one really knows for sure what is happening to EMR students.

The Advisory Committee asked Leslie Brinegar at the open meeting for an explanation:

My feeling with regard to the***rather rapid increase during the past several years, is***[that EH is] a relatively new program, only being 12 or 13 years of age, which

started with one or two districts on a pilot basis, and has been kind of growing each year***.As a matter of fact,***[EH is] growing very rapidly.

Mr. Brinegar told the Advisory Committee that the State department of education doesn't know what happened to students transferred from EMR classes from 1970 through 1974. Whether they were shifted to classes for the educationally handicapped is a question that remains unanswered because the department kept minimal records on transitional placement.

The Advisory Committee asked Mr. Brinegar why the department stopped keeping EH statistics. He stated there were not enough funds and staff to do so. Later in his testimony Mr. Brinegar was asked what has happened to former EMR students. He said that the department of education has not followed up on the placement of former EMR students and added:

We can make some estimates based upon samplings, but if your question is have we followed up***have the schools developed systems and have we monitored those systems to follow each child who'd been transitioned out, the answer is no, we do not have the information.

Fiscal Monitoring and Evaluation

The California Department of Education's Bureau of School Apportionments and Reports (BSAR) allocates funds to each school district for EMR programs. As a part of the funding disbursement, BSAR has some monitoring responsibilities. In effect, it could withhold funds from districts that are not in fiscal compliance with the department's regulations and State law.¹⁴

The bureau of school apportionments and reports oversees EMR financing for the State's public schools. Under the State plan for financing public schools, every school district is allocated a basic sum per pupil based on average daily attendance (ADA). This is called the foundation program. The amount is approximately doubled for EMR students by way of an additional special allowance.¹⁵

Jacque Ross, immediate past chief of BSAR, told the Advisory Committee that "currently the formula is such that combination of the EMR allowance and the foundation program give approximately \$18,000 to \$23,000 per class."

For 1974-75 the total State EMR allocation was \$14 million.¹⁶ In addition to this money, the Federal Government provided funds to the State for special education. Leslie Brinegar told the State Advisory Committee: "The Federal Government does not provide funds [to California] specifically for EMR children. It provides monies through several programs for handicapped children generally."

In 1974-75 the Federal Government provided approximately \$18 million to California for various special education programs. Mr. Brinegar estimated that California spent \$4 million of this amount on EMR programs. Mr. Brinegar explained two ways this Federal money is distributed: "Some of it is by direct entitlement based upon a percentage of a school's population to the State as a whole. Others are based upon project application."

The California State Department of Education monitors and evaluates applications made for these funds by school districts. One method used is a project audit review team process. Mr. Brinegar explained how this works:

The team consists of one department member and two outside members who go into the school districts, sometime during the year, usually toward the close of the year***[they] examine the application itself and relate to what's really going on. They look at the fiscal "component," how the monies are being expended and they also look at the programmatic components. They have an entry interview and exit interview, they make a written report, [and] that report comes to our unit.

The United States Office of Education requires that these reports be made by the State on special forms. Once the Office of Education approves the overall State plan for special education Federal funding, it is left up to the State to approve or disapprove individual school district applications for this money. The U.S. Office of Education has no control over individual school district plans except in exceptional circumstances such as illegal receipt of Federal funds.¹⁷ Dr. Phelan, administrator, educational improvement for the handicapped, stated that school district applications for Federal special education funding are generally approved by the State board of education¹⁸ based upon recommendations from the department of education.

A district requesting State EMR funds submits an attendance report to the county superintendent

of education who reviews the report and certifies it as correct. The report is then forwarded to BSAR. Except for a check of computations and a comparison of the current attendance with the prior year's, BSAR approves the attendance report and directs the State controller to issue an allocation for the requested funds.¹⁹

According to Mr. Ross, BSAR does not routinely monitor the accuracy of an application for State EMR funds. If the county superintendent does not conduct a thorough review of a district's application, BSAR seldom knows if inaccuracies have been reported. Mr. Ross explained:

All EMR attendance and cost reports are certified by the district and the county superintendent. So, when they send a report in to the department of education, as far as EMR is concerned, it has been certified by the district and the county superintendent.

Mr. Ross told the Advisory Committee that each district is required to have an annual independent audit, but this does not guarantee that a district will use an impartial auditor or that it will not report programs and students it does not have. According to Mr. Ross, reporting errors include: "Illegal practices such as using an uncertificated teacher, not conducting the program for the minimum hours per day, or not [having] properly identified pupils in the program."

BSAR usually accepts local certification at face value. While Mr. Ross was chief of BSAR he estimated that there were approximately 3 illegal reports a year out of 1,050 reporting school districts. If an illegality was admitted, funding was withdrawn. If the district denied illegality, a field investigation was done by the State department of education to decide compliance issues. One of these cases is in the process of resolution and agreements were reached in the other two. In one case funds were withheld.

Thomas Rothey questioned the State department of education's auditing efforts:

There really isn't***any kind of an audit procedure that is carried on either by our office or the State department of education to see that there is compliance in the expenditure of funds.

The department of finance, division of audits, oftentimes will take particular program areas and go out and do audits in different districts

and look at compliance, whether or not the funds were spent in compliance with legislative guidelines.

The Advisory Committee was unable to deter-

mine the effectiveness of these compliance reviews. The absence of uniform State fiscal monitoring and evaluation of EMR programs makes systematic review difficult.

Notes to Section IV

1. California Advisory Committee open meeting transcript, June 26-27, 1975. All quotes unless otherwise noted, are from this transcript. The office of special education was designated as the special education support unit at the time of the investigation and is referred to as such throughout this report.

2. This description of the unit's functions was derived from interviews with Special Education Support Unit staff, April-June 1975.

3. Leslie Brinegar, telephone interview, Oct. 20, 1975.

4. U.S. Commission on Civil Rights, *The Federal Civil Rights Enforcement Effort—1974*, vol. V, *To Eliminate Employment Discrimination* (1975), pp. 139-40. See also H. Kranz, "Are Merit and Equity Compatible?" *Public Administration Review*, vol. 5 (September/October 1974), p. 434; S. Krislov, *Representative Bureaucracy* (1974), pp. 54-65; and address by Arthur S. Flemming, Chairman, U.S. Commission on Civil Rights, in *Making Public Employment a Model of Equal Opportunity*, Conference, Boston, Mass., Sept. 22, 1974. See also Advisory Council on Intergovernmental Personnel Policy, *More Effective Public Service—Supplementary Report to the President and the Congress* (1974). In July 1974 the Advisory Council on Intergovernmental Policy adopted the following statement: "The Council believes that representativeness in the workforce is a desirable goal of public personnel policy***. The Council further believes that it is particularly important at this time in our history that women, persons of minority races, and others who have not been adequately represented in government be in the public service and hold high and responsible positions in it. A representative workforce will increase the credibility of government and the citizens' ability to identify with it. It will stand as a visible symbol of our national unity." *More Effective Public Service*, p. 5.

5. State of California, Department of Education, *Programs for the Educable Mentally Retarded in California Public Schools* (1974).

6. "In July of 1975, the State Department of Education initiated the project: 'Systematic Program Development for Mentally Retarded Pupils.' Systematic procedures were established for reviewing, monitoring, documenting and reporting the nature of placement procedures of EMR pupils. To facilitate the orderly collection of data, the project staff (3 persons) developed three instruments: (1) Administrative Interview Guide; (2) Economic Factor Guide, and (3) Pupil Record Survey Guide.

"Each instrument was designed to obtain specific information. The Administrative Interview Guide focused on information which pertained to processes, procedures and conditions present in a district as a whole and generally applied to each EMR pupil. The Economic Factor Guide was used to determine the estimated family income, value of dwelling and the number of persons living in the household. The Pupil Record Survey Guide was used to systematically guide the team's review of pupil records in relationship to due process in the placement of pupils, assessment procedures of pupils, school-parent con-

tacts, language of the pupil and home, etc." *Comments*. The Advisory Committee noted that the department failed to provide the results of these new procedures. For further amplification, see appendix B.

7. Cal. Educ. Code §6902.095 (West 1975).

8. *Ibid*.

9. Cal. Educ. Code §6906 (West 1975).

10. Leslie Brinegar, telephone interview, Oct. 20, 1975.

11. In its review, the State department of education wrote: "[The Advisory Committee] should explain the legal limitations regarding the use of fines by the State Department of Education." *Comments*. However, the department did not provide the Committee with these limitations.

12. Leslie Brinegar, assistant superintendent and director, Office of Special Education, staff interview, Mar. 3, 1975.

13. *Review of Transition Programs*, p. 1.

The UCLA project staff worked cooperatively with researchers from the University of California at Riverside (UCR) and the University of Southern California (USC) in Los Angeles. The researchers from UCR and USC were involved in a federally-funded study of pupils reclassified from EMR status. The UCLA project consisted of two phases and "focused on administrative and programmatic aspects of implementation of supplemental or 'transition' legislation." Phase 1 consisted of onsite interviews with district administrators in charge of legislatively mandated transition programs in 10 selected school districts. In Phase 2 questionnaires were mailed to all districts which had approved supplemental or transition programs. The content of the questionnaires was developed partly from information collected in Phase 1. "Findings from the two phases were combined to allow consideration of procedures for planning and implementation, identification and placement of pupils, curricular and instructional accommodations, preparation of personnel, and followup and evaluation."

The data compiled from the UCLA study were interpreted to demonstrate overall success for the Los Angeles Unified School District's transition program. Positive evaluations were stronger at the elementary than secondary levels

14. Jacque Ross, interview, May 20, 1975.

15. *Ibid*.

16. *Ibid*.

17. Art Phelan, administrator, Educational Improvement for the Handicapped, State Department of Education, telephone interview, Dec. 1, 1975.

18. *Ibid*.

19. Ross Interview.

V. The California Master Plan for Special Education

Despite the legislative reforms of the early 1970s, both the legislature and the department recognized that inequities still existed in special education programs. In reviewing recent litigation of common issues and complaints in special education nationwide, experts identified basic problem areas in need of reform. These dealt with "inappropriate selection of tests; incompetence in administration of tests; lack of parental involvement in screening and placement decisions; inadequacy of special education programming; and the stigmatizing effects of labeling."¹ "The net effect of traditional selection and placement practices was to work against pupils from ethnic minority and disadvantaged economic backgrounds."²

To alleviate these problem areas, the State department of education formulated the "Master Plan for Special Education."³ The department defined six needs of California's special education system that the master plan is designed to correct.

1. There is a need for a clearer delineation of responsibility at the State, county and local levels for the provision of special education.
2. There is a need to recognize participants in special education programs as "individuals with exceptional needs."
3. There is a need for program components which promote the most effective special education program for exceptional individuals.
4. There is a need for a system to collect information and properly evaluate special education programs.
5. There is a need for an equitable system of financial support to special education which will promote improved programs and fiscal accountability.
6. There is a need for a more coordinated effort to recruit, train, and provide in-service educational opportunities to teachers, administrators, supervisors, consultants and other special education personnel.⁴

Two of these needs reflect the importance of the Advisory Committee's study: the need for an effective monitoring and evaluating mechanism; and the need for improved fiscal accountability for EMR and all other special education programming.

Originally authored by the State department of education, the master plan was designed to meet these needs. The plan, as approved by the California legislature in 1975 and entitled *Educational Services for Individuals with Exceptional Needs*, is a pilot program with a requirement that the legislature consider statewide adoption within 3 years.⁵

Responsibility for administering the plan went to the Implementation of Master Plan Activities Coordination Team (IMPACT), which is a section of the special education support unit.⁶ IMPACT had six professional staff in 1975: five white males and one white female. Two clerical support staff were assigned to IMPACT; both were white females.

The legislature allocated \$150,000 to the State department of education to administer IMPACT in 1974-75 and \$300,000 for 1975-76. Funding to implement the master plan totaled \$24 million for the 1975-76 fiscal year. No allocation was made for the year of the pilot program, 1976-77.

California has 1,050 school districts⁷ all of which are required to ensure that EMR pupils are provided services unless the district has less than 901 average daily attendance, in which case the county superintendent of schools is responsible for providing services.⁸ Only six districts or consortia of districts participated in the master plan pilot effort in September 1975. Those participating in the pilot program were called Responsible Local Agencies (RLAs) by the State department of education. They were Contra Costa County, Humboldt-Del Norte Counties, Sacramento Unified School District, Santa Barbara County, Santa Monica Unified School District, and Stanislaus County. These areas included 24,000 special education students within 108 districts.⁹ Planning called for inclusion of four additional comprehen-

sive implementors in 1976. By law the pilot program is limited to 10 comprehensive plans submitted by RLAs.¹⁰

When asked by the Advisory Committee about the criteria for selection, Clif Shryock, a staff member of IMPACT, explained that the department was interested in a number of factors that included district size and the scope of the comprehensive plan which the district submitted to qualify as a pilot area.¹¹

Under the master plan, participating implementors will be required to submit written comprehensive plans of education that the State board of education must approve. Dr. Simmons, director of IMPACT, explained: "Under AB 4040 the responsible local agency is required to thoroughly evaluate its programs annually, and it reports certain of these findings to the superintendent of public instruction."

Even on a pilot basis the California State Legislature did not include any enforcement mechanisms to ensure that school districts meet the needs of special education students.¹² This is a crippling omission. Program and fiscal audits are ineffective if the State cannot ensure compliance with the law.

The State is responsible, however, for evaluation, if not enforcement. The superintendent of public instruction must submit to the State board of education, the legislature, the Governor, the U.S. Office of Education, and each local agency an annual evaluation of the special education programs.¹³ The education code also includes a monitoring component; it directs the superintendent to review and conduct onsite audits of each approved program.¹⁴

Ms. Fraser, staff attorney, California Association for the Mentally Retarded, was not convinced that the monitoring requirement of the master plan would be effective. She said: "I'm also concerned about monitoring***I'm not sure who's responsible for what and I'm not sure what enforcement mechanism will be used where school districts fail to comply***with the master plan requirements."

Mr. Rothey, administrative analyst, California State Legislature budget committee, commented to the Advisory Committee that:

There has to be a stronger evaluation component, and this is tied into***the whole diagnosis and evaluation***.The legislature is

going to be confronted in 1978 with making a decision; is the pilot project of the master plan successful and should it be implemented statewide?***One of the big problems that we have in the analyst's office in looking at it,***is how strong is the evaluation component?

In discussing the master plan audit requirements, the team director for implementation of the master plan, Dr. Simmons, made these observations:

The law merely requires that an audit be performed and the State board of education will have to spell out the very details of that. We're in the process, at the present time, of developing the regulations. We will most likely follow a process similar to that which we use in Federal projects where the district provides an evaluation based on its program, where we go in to see that their perceptions of their own programs are adequate, where we do question people, look at programs, and provide the district with recommendations for the improvement of its program.

The master plan requires that each student be labeled as having a specific type of learning disorder.¹⁵ Originally, the department of education's master plan proposed that all individual categories be dropped and that all children in need of special education services have a single designation, "individuals with exceptional needs." This change would have corrected two long-standing problems: stigmatization by label and rigid categorical programming and funding, which imply that children must be grouped by handicap rather than educational need.¹⁶ However, the master plan as enacted retained the categorizing and the individual groupings so that racial and ethnic data gathering would be possible.¹⁷

State department of education representatives maintain that the retention of labels for the purpose of auditing will have no effect on the children who are in special education programs. When Mr. Shryock was asked if the teachers of these children would necessarily be aware of their categories so as to instruct them adequately, he answered: "Not by category but by individuals, the individual's educational needs that have been determined by the school assessment team—or the district appraisal***team." Mr. Shryock agreed with the Advisory Committee that the new process is another kind of sophisticated categorical type of

system by which youngsters will still be identified but not labeled as easily as in the old system.

Margaret Fraser, staff attorney for the California Association for the Retarded, was concerned about the retention of labels. Her organization worked closely with the State and other groups on planning and implementation of the master plan for special education.¹⁸ She told the Advisory Committee:

In addition, there appears to be a perpetuation of labels and of course that was one of the things that these comprehensive plans were supposed to eliminate. The intent language in the master plan itself talks about eliminating labels and ensuring that handicapped children in need of a specialized education receive an appropriate education and we don't have children who aren't able to fit in the appropriate box falling between the cracks.

I am concerned that this labeling will be perpetuated. And of course, that children will continue to be unserved.

Other aspects of the master plan were not directly

related to the focus of the Advisory Committee's investigation and consequently are not discussed here.

The Advisory Committee found that inequities are a direct result of ineffective, and in most cases, nonexistent monitoring and evaluating mechanisms to ensure fiscal and program accountability of the school districts throughout California. The California master plan for special education was intended to alleviate the inequities existing in special education. The master plan pilot now requires program and fiscal evaluations of special education programs both by the State and by school districts. The master plan still does not provide any State department enforcement mechanisms against non-complying school districts. Stigmatizing special education labels will still be used to categorize pupils, ostensibly only to expedite record keeping.¹⁹ Therefore, the Advisory Committee questions whether the master plan for special education will reform these two critical aspects of special education.

Notes to Section V

1. See S. Ross, H. De Young, and J.S. Cohen, "Confrontation: Special Education and the Law," *Exceptional Children*, vol. 4, no. 7 (1971), pp. 5-12, for a recent review of litigation concerning special education issues; reported in *Review of Transition Programs*, p. 2; and State of California, Department of Education, *California Master Plan for Special Education* (1974), foreword, p. iii, as to stigmatization by labeling.

2. *Review of Transition Programs*, p. 2.

3. The purposes for the development of the master plan are articulated in the foreword (p. iii) to the *California Master Plan for Special Education*.

4. *California Master Plan*, pp. 5-8.

5. Cal. Educ. Code §7000 *et seq.* (West 1975).

6. Dr. Alan Simmons, director, IMPACT, California State Department of Education, interview, May 20, 1975.

7. Dr. Alan Simmons, telephone interview, June 10, 1975.

8. Cal. Educ. Code §§895-895.12 (West 1975).

9. Cliff Shryock, consultant, State Department of Education, interview, Mar. 5, 1975.

10. Cal. Educ. Code §7001 (West 1975).

11. The State board of education adopted criteria for Responsible Local Agencies (RLAs) selected for inclusion in the master plan on Jan. 10, 1975. *Comments* All quotes, unless otherwise noted, are from the California Advisory Committee open meeting transcript, June 26-27, 1975.

12. The department focuses on plan approval as an enforcement mechanism. Each Responsible Local Agency must have a plan approved prior to implementation. These plans must be renewed within a period of 1 to 3 years. Noncomplying plans will not be renewed. Budgets for Responsible Local Agencies are renewable yearly, and agencies not in compliance will not be funded. *Comments*.

13. Cal. Educ. Code §7026 (West 1975).

14. Cal. Educ. Code §7029 (West 1975).

15. Cal. Educ. Code §7027 (West 1975).

16. *California Master Plan*, (1974), p. iii.

17. Cal. Educ. Code §7027 (West 1975).

18. The master plan also provides a delivery system through which a resource specialist functions in each school with a school appraisal team to diagnose learning problems. A child receiving special education services is retained in the regular class but receives specialized, individualized training according to his or her needs. Training for evaluators of local special education programs is also provided. Cal. Educ. Code §§7018, 7018.1, 7019, 7020, and 7028 (West 1975).

19. The department emphasized this in its comments. The department wrote: "The intent of the California State Department of Education is stated in the *California Master Plan for Special Education*: Instead of labeling children by categories, the Master Plan proposes a single designation, 'individuals with exceptional needs,' for children receiving special services. (Foreword, p. iii)

"A number of individuals, citizen's groups, professional organizations, State agencies, special interest groups and political

action groups testified at the public hearings preceding the passage of AB 4040 (Chapter 1532), the authorizing legislation for the Master Plan. Several of the individuals and groups (among these CRLA) insisted that the Master Plan maintain the specific identity of the pupils assigned to its programs. As a result, '***four subclassifications, which should be used *only* for data collection and reporting purposes' (Master Plan, p. 23) were established.

"The categorization of pupils in a Master Plan program is limited to four classifications (Communicatively Handicapped, Learning Handicapped, Physically Handicapped, and Severely Handicapped) and their subclassifications identified in Educ. Code 7027. These classifications are required for the Annual Report (Educ. Code 7027) to the State." *Comments.*

VI. Conclusions and Recommendations

The State of California funds programs for the education of the mentally retarded. These programs are not monitored or evaluated to ensure that school districts adopt the EMR guidelines promulgated by the California Department of Education.

From 1970 to 1974 more than 22,000 students throughout California were transferred out of EMR classes. The State department of education does not know what happened to these students, but statistics furnished by the department suggest that many of them may have been shifted to EH classes.

The quality and effect of EMR education in California is largely unknown because the special education support unit that is charged with the State's responsibility for administering EMR has inadequately monitored this program. The program for educationally handicapped is not monitored either. Local school districts have been allowed full discretion in operating their EMR programs. Because of the ambivalent role played by the State department of education, it is difficult to assess which school districts are meeting the intent of the law. As long as this vagueness continues, the effectiveness of legislation will never be assessed.

For 1974-75 the total State EMR allocation is \$14 million. This amount represents an expenditure of \$18,000-\$23,000 per EMR class. Educable mentally retarded program funding is big business in California. The fiscal unit of the State department of education, BSAR, which actually approves State funding for EMR, has never conducted systematic audits and reviews of school district applications for this funding. Spot checks at irregular intervals and community complaints have been the only mechanism for monitoring information submitted to the State by more than 1,000 California school districts.

What State review exists is usually predicated upon school district requests, and even then, the

review is limited to the narrow concept of the district's concern. The State theorizes that it is not in the compliance field but is available to school districts, upon request, to offer guidance, give advice, and provide technical assistance. This is not the intent of the law, which says that the department "shall enforce minimum standards for all special schools and classes throughout the State."

There were no statutory or administrative provisions for mandatory, annual, program and fiscal reviews of EMR or EH programs prior to the master plan, but even master plan review requirements are attached to a pilot program. There are still no enforcement mechanisms; the master plan legislation provides no penalties against noncomplying school districts. The absence of State enforcement power seriously weakens the effectiveness of annual reviews and audits of EMR programs.

These deficiencies must be corrected for the master plan to result in meaningful reforms in special education, particularly for the EMR.

1. The California State Legislature should amend the California Master Plan for Education to include mandatory, annual EMR program and fiscal reviews and audits conducted both by the State and all California school districts that conduct EMR programs, for the 3-year span of the master plan. This amendment should include the 10 pilot areas called for under the master plan and all remaining school districts not included as pilot areas in the master plan.

Full implementation of the master plan for special education is several years away, and it is not until then that its success or failure can be completely assessed. The current situation involving the absence of uniform and mandatory State monitoring of EMR programs requires more immediate actions. The local school agencies not included in the implementation of the master plan must have their EMR programs monitored and evaluated by the State to ensure compliance with legislative mandate.

2. The legislature should require that these reviews and audits include regular and systematic statistics on the ethnic composition of EH classes in all California school districts.

The California Department of Education has kept no uniform statistics on what happens to students transferred from EMR classes. No one in the State department knows where over 20,000 of these students went for the period 1970-74. Records supplied by the department show that while EMR enrollments were drastically reduced from 1970 to 1974, EH enrollments showed a dramatic increase during the same period. The State department must keep reliable records on EH enrollments so that patterns of shifting students from one special education class to another, without justification, can be detected and remedied.

3. Review teams should be formed by the California State Department of Education to conduct these annual EMR program and fiscal reviews, and the review teams should reflect ethnic and sex diversity not presently found in the unit of the department charged with EMR and master plan responsibilities.

Ethnic minority students are disproportionately represented in EMR classes in California. Persons who monitor and evaluate EMR and other special education programs should reflect an awareness of and sensitivity toward the particular problems and concerns of the affected student and parent populations.

4. When State monies are involved, consistent failure of school districts to comply with State law and administrative guidelines concerning EMR programs and fiscal accountability should result in the imposition of substantial fines and civil penalties as alternatives to the withholding of funds. If these alternatives are unsuccessful in forcing compliance, State funding for EMR programs should be withheld.

At present the only enforcement mechanism the State has is to withhold funds from EMR programs in the event of noncompliance by a school district. Since the State of California heavily finances EMR programs, the State should have mechanisms available to force compliance with its directives.

5. The California State Department of Education should contract with an independent, objective agency or educational institution to conduct a thorough study of the operation of the master plan for special education over the next 3 years, as the State did for a study of the transition program. If the master plan is successful, the State department of

education should use this study as support to encourage legislative adoption of statewide implementation of the master plan.

The California State Department of Education should contract with an independent, objective agency or educational institution to conduct a thorough study of the operation of the master plan for special education over the next 3 years, as the State did for a study of the transition program. If the master plan is successful, the State department of education should use this study as support to encourage legislative adoption of statewide implementation of the master plan.

The master plan is the first comprehensive plan for special education reform, including EMR, in California. The plan is of particular importance because it includes provisions for mandatory, independent State reviews and audits as well as evaluations at the district level.

Only 10 local school agencies are included in the implementation of the master plan over the next 3 years. If the master plan is evaluated as being successful, and considered to have any significant, permanent impact on the State's EMR students and programs, it will then have to be expanded to include all school districts within the State.

Appendix A

(FACSIMILE)

A STATEMENT OF CONCERN BY THE BAY AREA ASSOCIATION OF BLACK PSYCHOLOGISTS PRESENTED TO CALIFORNIA ADVISORY COMMITTEE TO THE UNITED STATES COMMISSION ON CIVIL RIGHTS

Sacramento, California

June, 1975

The Bay Area Association of Black Psychologists would like to bring to the attention of the U.S. Civil Rights Commission several serious problems that exist in the special education programs for the educable mentally retarded (EMR) here in the State of California and throughout the nation.

These problems are that:

- (1) A disproportionately large number of Black and other minority children are inappropriately placed in EMR classes.
- (2) These inappropriately placed children are denied the opportunity to obtain an adequate education.
- (3) The inappropriate placement results from the use of culturally biased tests of intelligence as a means of determining eligibility for placement in EMR classes.
- (4) Many parents, particularly minority parents, do not fully understand the true nature, purpose and potential outcome of giving their consent to the placement of their children in EMR classes.

A review of the racial composition of the students in EMR classes in California clearly demonstrates the disproportionate representation of Black and Chicano students in these classes. The latest statistics available (September, 1973) indicate that 25 percent of the students in EMR classes throughout the state of California were Black. But Black children make up only 9 percent

of the student population in the state. Chicano and Latino children make up 16 percent of the student population in California, but make up 22 percent of the population of EMR classes statewide.

It is in fact true that the number of students in EMR classes in California has been reduced significantly in the past several years. In 1969 there were 54,541 students in EMR classes throughout California. The September 1973 data reveals that number has been reduced to 35,142. Despite this marked reduction in overall number of students in EMR classes, the disproportionate representation of Blacks and Chicanos has not changed appreciably. In 1969 the percentage of Black children in EMR classes was 25.5, in 1973 it was 25.0. In that same period the proportion of Chicano children had decreased from twenty-eight to twenty-three percent.

Although the statistics for the 1974-75 academic year are not available, they would probably reveal an even more dramatic reduction in the number and proportion of Chicano children in EMR classes. In 1974 the State Department of Education negotiated with the plaintiffs in the *Diana* case an agreement to limit the number of Chicano children in EMR classes. The State Department of Education agreed to notify all school districts where there was a "significant variance" between the proportion of Chicano children in the district student population that these districts must eliminate that disparity. However, the State Department of Education consistently refused to apply the same "significant variance" procedure where disparities exist in Black student enrollment in EMR classes.

There is clear and demonstrable evidence to indicate that a major portion of Black and Chicano children enrolled in EMR classes are inappropriately placed. In other words, they are not mentally retarded and should not be labelled as such.

Dr. Jane Mercer (1973) reported that at least 75 percent of the students in EMR classes in

California are inappropriately diagnosed retarded and would not be so labelled if appropriate assessment measures which take into account sociocultural background had been used. Dr. Wilson Riles (1970) Superintendent of Public Instruction (California State Department of Education), reported that the likelihood for a Chicano or Black child to be labelled and placed in an EMR class is three to four times as great as it is for a white child. These data are consistent with data from other places in the nation. When Washington, D.C. reevaluated the students in EMR classes, 66 percent of the Blacks were found to be inappropriately placed. Reevaluation of the students in Philadelphia indicated that 25 percent of the Black students were definitely mislabelled and another 43 percent were questionable. The total of 68 percent is again consistent with the trend suggested by the figures already cited.

The California State Master Plan for Special Education, considered a much needed and futuristic approach to education, is plagued with problems that will delay implementation unnecessarily. Under the proposed time plan, complete implementation throughout the state will require five to eight years. Finally, the Master Plan does not focus particular attention on the educational needs of students who were inappropriately placed and who may be returned to regular class program once an adequate reassessment program is instituted. These children will need assistance to help them make the transition from EMR classes to the regular academic program. The Master Plan offers no immediate relief for those students already mislabelled. The Master Plan does not provide any substantial safeguards that Black children will not continue to be misdiagnosed and thereby denied equal opportunity for quality education.

The Bay Area Association of Black Psychologists strongly urges the U.S. Civil Rights Commission to use its power and influence at all levels of government, Federal, State and municipal to achieve the following:

1. The systematic elimination of funding mechanisms which encourage the classifying and labelling of children as mentally retarded.
2. The development of culturally specific and culturally relevant means of assessing intellectual functioning.

3. The establishment of greater control over the development and distribution of tests used in the evaluation of the intellectual functioning.

4. The establishment of mandatory procedures requiring school districts to obtain the *informal consent* of parents before the child is evaluated and before the child is placed in a special class for the mentally retarded.

5. The establishment of funding mechanisms to allow parents to obtain a second evaluation by professionals not associated with the school system as a means of guaranteeing the right of informed consent.

6. The establishment of procedures that require that psychological evaluations be conducted by qualified professionals of the same racial or ethnic background of the student to be evaluated.

7. The establishment of a national program for the immediate removal from special education classes all students improperly placed and the creation of necessary transitional programs to facilitate their effective adjustment in the regular class.

References

- Diana et al., v. State Board of Education, C-70 37 RFT.
- Mercer, J. *Labelling the Mentally Retarded*, University of California Press, Berkeley, 1973.
- President's Committee on Mental Retardation Report, *The Six Hour Retarded Child*, 1970.

Appendix B

ADDITIONAL COMMENTS, CALIFORNIA DEPARTMENT OF EDUCATION

Department *Comments* added:

"Two criteria were used for the selection of districts to be included in the first year of project reviews:

(1) All districts with a Black pupil enrolled in excess of 15 percent which was represented by five or more pupils for the reported 1973-74 school year.

(2) All districts with a Spanish surnamed enrollment in excess of the "E" Factor Allowance, which also had a Black pupil enrollment in excess of 15 percent regardless of the number of pupils reported for the 1973-74 school year.

Using these criteria, the project identified 27 districts. Four districts meeting these criteria were omitted. Two of these districts were involved in Master Plan reorganization and two districts were involved in Federal Court litigation. Three districts were added to the 23 districts meeting the above criteria to account for the total of 26 districts used by the project in its first year of activities.

The number of pupil records reviewed in each of the 26 districts was based on a representative sample of district EMR enrollment. Within each district, records to be reviewed were selected by project staff from a listing of all EMR pupils in the district. This selection was based on considerations of ethnicity, grade level of program, geographic location of class within the district, and sex of the pupil.

Two processes were used in the collection of data: interview and record survey. Procedural policies regarding referral, assessment, planning, placement and parental involvement, as well as enrollment statistics including ethnicity, sex, age, duration in the program, etc., were obtained in an interview situation from the district person with responsibility for the EMR program. Each record selected for review was surveyed for physical evidence of ad-

herence to State Department of Education guidelines.

Two systematic reporting processes were used by the project in providing feedback to the districts in which reviews were accomplished. The first of these was an informal verbal report to the directors of EMR programs regarding the initial findings of the project team. This was generally given immediately following the conclusion of the visit at the site. Later, a fully documented written report was made to the superintendent of the district, the director of Special Education, and to the person with responsibility for the EMR program. This detailed report responded to each area of the record survey, including: required parent contacts and permissions, language used in parent contacts, instrumentation used in pupil assessment, records of pupil assessment and discussions with parents, special program participation by pupils, specific pupil health factors and required signatures and records of pupil placement and review procedures. 'MR Pupil Placement Workshops' are presently being scheduled for the fall of 1976. These workshops are designed to bring specific information regarding pupil placement procedures to practicing admission committees throughout the state. Other project reporting procedures will continue.

In October 1974, the California State Board of Education adopted an adaptive behavior scale to be used in the placement procedures for all pupils entering programs for the educable mentally retarded. Regional assessment workshops have been conducted for school psychologists throughout the state as a means of informing the psychologists of the proper procedures in the use of the new instrumentation. These regional assessment workshops are to be continued during the 1976-77 school year.

In January 1975, the California State Board of Education expanded on Judge Peckham's order that individual intelligence tests would not be used in the placement procedures for black EMR pupils, and disallowed the use of these instruments

for use in placement of *any* pupil in a program for EMR pupils.

During the months of April and May 1976, six teams consisting of California State Department of Education consultants, educators from the field of public school education, and special educators from public school education reviewed, monitored and evaluated Master Plan procedures and programs in six RLA's consisting of 108 school districts and/or county offices. This was not only a compliance audit (are regulations being adhered to), but it was also a program audit regarding the quality of the program for pupils.

A Program Quality Analysis (PQA) was developed by the State Department of Education in conjunction with personnel from the field of public education. Separate instrumentation (PQAs) were developed for use with schools, districts and Responsible Local Agencies (RLAs). These instruments were designed to systematically guide the audit team's monitoring and evaluating of the programs being reviewed.

All six of the Responsible Local Agencies were included in the reviews. Eighteen of the schools within each RLA were reviewed, with 16 of these schools being randomly selected by a computer program (designed for this purpose) and two of the schools being selected by the RLA.

All records reviewed and persons interviewed were determined by the Program Quality Analysis on the basis of their relevance to the issue or subject being audited. In addition, each RLA was required to submit an audit trail (i.e., objectives, responsible persons for meeting these, time line, etc.) at the time of their initial project being submitted to the State Department of Education. These audit trails also served to guide the monitoring and evaluating team in its review of Master Plan programs.

The audit team used interviews, record checks and observation for obtaining necessary data. Each of these processes was guided by the systematically developed instrumentation.

Each school, district, and RLA received a written copy of the PQA documentation. In addition, an oral (exit interview) and written report was provided to each school, district and RLA regarding program strengths and recommendations of the reviewing team. All staff with Master Plan responsibilities (regular and special education teachers,

principals, superintendents, directors of special education, etc.), were present for the oral reporting. The written reports went to those with administrative responsibility for the programs."